

LAW OFFICE OF B. TYLER BROOKS, PLLC

B. TYLER BROOKS
ATTORNEY & COUNSELOR AT LAW

October 3, 2019

Principal Monica Yllanes
APEX MIDDLE SCHOOL
400 East Moore Street
Apex, North Carolina 27502
(via email to myllanes@wcpss.net)

Re: Group Therapy “Circles” at Apex Middle School

Dear Principal Yllanes:

I represent PARENTS FOR THE PROTECTION OF STUDENTS, an unincorporated grassroots association of concerned Wake County parents and others (including parents of students at Apex Middle) who have been disturbed by recent actions taken by the Wake County Public School System.

The specific concern addressed by this letter is a practice that has been instituted at Apex Middle School and perhaps other schools in the system as well—“the Circle” (which is sometimes also referred to as “Circles”). These schoolwide sessions at Apex Middle involve all students in grades 6, 7, and 8 every week, thereby affecting between 1200 and 1300 students.

As described by our parents and their children, as well as the school’s own materials about “the Circle,” it is expressly intended to address “difficult emotions and difficult realities.” Moreover, this activity effectively compels disclosure of highly sensitive and personal information from students, including the following:

- What it means to “listen from [and] speak from the heart;”
- Describing times the student sits in a “circle” *at home*;
- Describing how the student “feels” at the moment;
- Answering, “If you were a kind of weather today, what would the weather be?”;
- What it feels like to be “bullied;”

5540 CENTERVIEW DRIVE, SUITE 200, RALEIGH, NORTH CAROLINA 27606

(919) 377-9546 • BTB@BTYLERBROOKSLAWYER.COM

ADMITTED TO PRACTICE LAW IN NORTH CAROLINA, SOUTH CAROLINA, TENNESSEE, AND MICHIGAN

- Talking about a “high point” and a “low point” in the student’s past week;
- Describing “friendship” for the student;
- Aspirations for who the student wishes to be;
- Describing the student’s *family*; and
- Experiences of being “hurt” and “angry.”

The program makes clear that its purpose is to “talk about [the student’s] feelings” and furthermore that there is “no hiding behind a desk.”

These are not academic topics; they are topics for a group therapy session. Group therapy, like other forms of traditional psychological treatment and counseling, can bring great benefit to many people. But, it is not within the purview of a school to conduct such treatment during the school day, without parental consent, and outside of the supervision of duly-trained and licensed psychological and counseling professionals. Therefore, we call for the immediate discontinuation of this activity at Apex Middle.

The practice of psychology is defined broadly and is extensively regulated by North Carolina law. For example, among other things, the regulated “practice of psychology” includes “counseling, psychoanalysis, psychotherapy, . . . and therapy; [as well as] psychoeducational evaluation, therapy, remediation, and consultation . . . [whether] rendered to individuals, families, **groups**, [or] the public . . . [and] without regard to whether payment is received for services rendered.” N.C. Gen. Stat. § 90-270.2(8) (emphasis added). The reasons for this broad definition are plainly stated in the statute itself, as the practice of psychology by unqualified persons *endangers public health, safety, and welfare*. *Id.* § 90-270.1.

The school’s activities likewise appear incompatible with the restrictions imposed under the Licensed Professional Counselors Act, N.C. Gen. Stat. §§ 90-329 *et seq.*, given that these teachers are not—to our knowledge—licensed under this law. *See id.* § 90-331 (“It shall be unlawful for any person who is not licensed under this Article to engage in the practice of counseling[.]”).

Licensed school psychologists and licensed school counselors have their own systems of regulation, but such personnel are not at issue here. Here, we are apparently concerned with rank-and-file teachers who seem to be conducting group therapy sessions in the classroom.

We are definitely curious as to why these group therapy sessions should take time away from instruction in traditional topics like mathematics, science, literature, foreign languages, history, art, and music. Even more importantly, though, we can also only imagine the emotional damage that could result if a student shared a private fact about herself or family in “the Circle” (e.g., questions of sexuality or a troubled homelife)—having been led to believe that the disclosure was safe and protected—only to then see that same information become fodder for middle school gossip. This detracts from, rather than enhances, the ability of students to learn.

Additionally, no consent was obtained from parents before children participated in these group therapy sessions. As with a situation that has arisen in another school in this district, we are thus again faced with the school system’s potential failure to comply with federal privacy protections. (We refer, of course, to the controversy in which students at a high school in this system have been required to disclose highly sensitive information on a “Diversity Inventory,” including the gender, sexuality, religion, and socio-economic status of themselves and those around them.)

Lest the school system need yet another reminder, the law is clear: “The child is not the mere creature of the State[.]” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925). Under federal law, students generally cannot be compelled, without parental consent, to submit to surveys, analyses, or evaluations that reveal information about a range of personal information, namely:

- political affiliations or beliefs of the student or the student’s parent;
- mental or psychological problems of the student or the student’s family;
- sex behavior or attitudes;
- illegal, anti-social, self-incriminating, or demeaning behavior;
- critical appraisals of other individuals with whom respondents have close family relationships;
- legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- religious practices, affiliations, or beliefs of the student or student’s parent; and
- income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program)[.]

20 U.S.C. § 1232h(b)(1)-(8). From our understanding of what is discussed in these group therapy sessions, such a session could easily qualify as a “survey, analysis, or evaluation that reveals information” concerning any number of these very sensitive areas.

Additionally, it must be noted that these group therapy sessions are, effectively, mandatory. They occur during the regular school day and as part of the regular curriculum. Students have been told that they may go to the principal’s office rather than remain in the class, but such an alternative is stigmatizing and causes the objecting student to feel as if *she* is the one doing something wrong.

A middle school student facing such stigma is thus hardly afforded a meaningful choice. Forcing students to go to a place of longstanding dread (*viz.*, “the principal’s office”) as means of avoiding invasive discussion of highly personal matters sends the message “that they are outsiders, not full members of the political community, and an accompanying message to [those who remain] that they are insiders, favored members of the political community.” *Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)).

Please understand that we are not questioning the wisdom of having duly licensed school psychologists, counselors, and other appropriately-credentialed mental health professionals available to address individual student needs. Please also understand that this letter is not meant to be an attack on you, your motives, or your leadership of Apex Middle School, nor is it an effort to impugn the motives of any other person. We appreciate that creating a learning environment in which all students are able to thrive and feel included is no easy task. We further believe, however, that it is imperative to call to your attention times when we find student mental health and safety are being potentially compromised by decisions that have been made by the school system.

Therefore, we respectfully ask you, the Superintendent, and the School Board to undertake the following actions:

- Immediately and permanently suspend any group therapy program, including but not limited to “Circles,” at Apex Middle School and at any other school at which such a program has been instituted;

- Commission an outside investigation to determine how and why the program was developed, approved, and implemented at any WCPSS school in apparent contravention of the licensing standards established by the state regulatory authorities vested with jurisdiction over the practices of psychology and counseling; and
- Provide all WCPSS parents and students, including those in the groups affected here, a summary statement of their personal privacy rights, as recognized by the WCPSS.

We thank you for your time and look forward to your response.

Sincerely,

B. Tyler Brooks

B. Tyler Brooks

CC: The Honorable Mark Johnson (via email)
N.C. Psychology Board (via email)
N.C. Board of Licensed Professional Counselors (via U.S. mail)
Superintendent Cathy Moore (via U.S. mail)
Chief of Schools Jackie Ellis (via email)
The Honorable Jim Martin (via email)
The Honorable Keith Sutton (via email)
The Honorable Roxie Cash (via email)
The Honorable Bill Fletcher (via email)
The Honorable Monika Johnson-Hostler (via email)
The Honorable Christine Kushner (via email)
The Honorable Lindsay Mahaffey (via email)
The Honorable Heather L. Scott (via email)
The Honorable Chris Heagarty (via email)